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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

FEDERAL TRADE COMMISSION, STATE
OF ARIZONA, STATE OF CALIFORNIA,
DISTRICT OF COLUMBIA, STATE OF
ILLINOIS, STATE OF MARYLAND, STATE
OF NEVADA, STATE OF NEW MEXICO,
STATE OF OREGON, and STATE OF
WYOMING,

Plaintiffs,

v.

THE KROGER COMPANY and
ALBERTSONS COMPANIES, INC.,

Defendants.

Case No.: 3:24-cv-00347-AN

DEFENDANTS THE KROGER
COMPANY AND ALBERTSONS
COMPANIES, INC.'S UNOPPOSED
MOTION TO RESTRICT ACCESS TO
SEALED MATERIALS

EXPEDITED CONSIDERATION
REQUESTED

I. L.R. 7-1(A) CERTIFICATION

Pursuant to L.R. 7-1(a) and the Case Management and Scheduling Order, ECF No. 88, counsel for Defendants The Kroger Company (“Kroger”) and Albertsons Companies, Inc. (“ACI”) (collectively, “Defendants”) conferred with Plaintiffs’ counsel regarding Defendants’ request to restrict public access to sealed materials and its request for expedited consideration. No party has opposed Defendants’ request.

II. MOTION

Defendants respectfully request that the Court restrict access to sealed materials filed by Kroger and ACI to the real parties (“Parties”) in this matter—Federal Trade Commission, State of Arizona, State of California, District of Columbia, State of Illinois, State of Maryland, State of Nevada, State of New Mexico, State of Oregon, State of Wyoming, Kroger, and ACI.

Defendants request that third parties who have appeared in this matter, such as *amici*, should not be permitted access to any of the documents that have been filed under seal.

Specifically, Defendants request that the Court restrict access to the following documents to just the Parties:

- ECF No. 177¹
- ECF No. 178
- ECF No. 193
- ECF No. 194

¹ Defendants recognize that ECF Nos. 177, 179, 193, and 194 (ACI’s Motion and Reply to Compel Target Corporation to Comply with Subpoena, as well as related filings) concern third-party Target Corporation, and that it is necessary to permit Target Corporation to access these filings. *See also* ECF Nos. 188 and 189 (Target Corporation’s response to ECF Nos. 177 and 178). However, no other third party or *amici* should be permitted access to ECF Nos. 177, 178, 193, and 194, consistent with the Stipulated Protective Order.

- ECF No. 219
- ECF No. 234
- ECF No. 235
- ECF No. 242
- ECF No. 243
- ECF No. 249
- ECF No. 250
- ECF No. 256
- ECF No. 257

III. MEMORANDUM

Kroger and ACI have complied with the Stipulated Protective Order (“SPO”) in this matter, ECF No. 97. In relevant part, the SPO restricts disclosure of Confidential and Highly Confidential information to the Court, the Parties, counsel for the Parties, certain witnesses, and persons retained by the Parties or Court to assist with this litigation. ECF No. 97 at 7. It further provides that “[i]n the event that any Confidential Material or Highly Confidential Material is contained in any pleading, motion, exhibit, or other paper filed or to be filed with the Court, the Court shall be so informed by the Party filing such papers, and such papers shall be filed under seal.” ECF No. 97 at 9.

Kroger and ACI have followed the instructions of the SPO. Defendants have filed notices with the Court when they filed Confidential Material or Highly Confidential Material informing the Court of such filings, referenced the SPO in any such filing, and filed documents under seal. In doing so, they intended to restrict access to any Confidential or Highly Confidential Information to the Court, the Parties, and counsel for the Parties, consistent with the SPO.

However, it appears that the Court's filing system has not limited access to these materials to the persons authorized to access this information pursuant to the SPO. In particular, Defendants understand that the Court's filing system has permitted certain non-parties—such as Target Corporation, certain Members of Congress, and the State of Ohio—to access Confidential and Highly Confidential Materials that Kroger or ACI have filed under seal, even though the public is denied access to these filings. These non-parties filed appearances in this matter, and others may do so in the future.

Defendants now respectfully request that the Court remedy this problem so that their confidential materials remain restricted to persons authorized to access them, consistent with the SPO. Defendants specifically request that any non-party who appears in this case *not* have access to the following filings:

- ECF No. 177
- ECF No. 178
- ECF No. 193
- ECF No. 194
- ECF No. 219
- ECF No. 234
- ECF No. 235
- ECF No. 242
- ECF No. 243
- ECF No. 249
- ECF No. 250
- ECF No. 256

- ECF No. 257

Defendants appreciate the Court's attention to and remedying of this technical issue.

Doing so ensures that Kroger and ACI's Confidential and Highly Confidential Information is restricted consistent with the SPO.

DATED: August 20, 2024

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